IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 8078 OF 2006

Pushpadevi Nemichand Jain ..Petitioner

Vs.

M/s. Lalwani Leasing Pvt. Ltd. ..Respondent

Mr. P.S. Dani i/by M/s. N.N. Vaishnawa and Co. for petitioner.

Mr. V.P. Sawant with Mr. B.V. Bhagat for respondent.

CORAM: B.H. MARLAPALLE, J.

Date : April 26, 2007.

P.C.:

1. Heard Mr. Dani the learned counsel for the petitioner and Mr. Sawant the learned counsel for the respondent.

2. This petition filed under Article 227 of the Constitution takes exception to the Judgment and Order dated 10/11/2006 rendered by the Appellate Bench of the Small Causes Court at Mumbai thereby allowing Appeal No. 321 of 2006 and granting an injunction against the petitioner.

3. The respondent-landlord has filed R.A.E. Suit No. 242/436 of 2005 for eviction of the petitioner-tenant from the suit premises i.e. Room No. 18 on first floor of the building by name Lalwani Mansion, 90, 2nd Cross Lane, Kalbadevi Road, Mumbai 400 002, on the ground of change of user. It is contended that the premises were let out to the petitioner for residential purpose and the petitioner has sub-let the said premises to a company called M/s.N.O. Textiles which is either a proprietary or partnership concern of the petitioner's husband. The application at Exh.6 was filed seeking four different reliefs i.e.,

(a) that the respondent be restrained from parting with the possession of the suit premises to third party or from creating any third party right or interest in respect of the suit premiss, till the decision of the suit;

(b) that the respondent be restrained from

carrying out commercial activities from the suit premises till the decision of the suit;

(c) that the respondent, by granting mandatory injunction, be directed to remove the so called articles, allegedly stored in the common passage of the suit premises and thereby blocking the common passage and,

(d) that the Court Commissioner be appointed to visit and inspect the actual situation of the suit premises.

. The application was rejected by the Small Causes Court. However, by the impugned order the Lower Appellate Court has allowed the appeal and the application at Exh.6 has been partly allowed by granting injunction i.e. restraining the present petitioner from using the suit premises or permitting the user of the suit premises or any portion thereof for non-residential or commercial purposes during the pendency of the suit.

4. The Lower Appellate Court in the impugned order has recorded a prima facie finding that the petitioner has been residing in Andheri and some of her family members are residing in Room No.53 located on the 4th floor of the Lalwani Mansion and the suit room is being used as the office of a firm called M/s. N.O. Textiles. As per the order passed below Exh.7 on 30/10/2006 photographs and bill of M/s.N.O. Textiles was produced on record and the photographs indicated that on the suit room the board of the said company is displayed. There was no dispute that the suit room was let out for residential purpose, but it was contended that right from the beginning, in fact, it has been used as a baithak and an office for receiving or book orders. This submission is fallacious prima facie because the room is on the first floor and some members of the family of the petitioner was staying on the 4th floor of the same building, whereas the petitioner is staying at Andheri. A limited relief has been granted by the Lower Appellate Court on the prima facie considerations and admittedly the entire building is residential and, therefore, the petitioner has been

restrained from carrying out any non-residential or commercial activities from the suit room during the pendency of the suit. No fault could be found in the view taken by the Lower Appellate Court. Hence, there is not case made out to interfere with the impugned order under Article 227 of the Constitution.

5. Hence, the petition is rejected summarily. Ad-interim order stands vacated.

6. Mr. Dani the learned counsel for the petitioner made an oral application for continuation of the ad-interim order. The oral application is rejected.

(B.H. Marlapalle,J.)